

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DAVID CHRISTAIN BURNS.

Plaintiff,

V.

MARK V. HANNIBAL, MARK E.
LINDSEY and JESSICA PILGRIM,

Defendants.

NO: 2:15-CV-00180-TOR

**ORDER ADOPTING REPORT AND
RECOMMENDATION, DENYING
MOTIONS, DENYING CLASS
CERTIFICATION, AND DISMISSING
FIRST AMENDED COMPLAINT**

Magistrate Judge Rodgers filed a Report and Recommendation on December

3, 2015 (ECF No. 19), recommending that Plaintiff's Motion to Voluntarily Dismiss

(ECF No. 15) and his Motion to Waive Collection of the Filing Fee (ECF No. 16)

16 be denied. Magistrate Judge Rogers further recommended that Plaintiff's request

for class certification be denied and documents bearing the names and allegations of

¹⁸ other persons be stricken. In addition, it was recommended that the First Amendment

Complaint be dismissed without prejudice for failure to state a claim upon which relief can be granted.

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1 relief may be granted, and that such dismissal count as one strike under 28 U.S.C. §
2 1915(g).

3 A two-page document construed as Objections to the Report and
4 Recommendation was filed on December 18, 2015 (ECF No. 20). The first page
5 appears to be copy of a memorandum regarding speedy trial issues filed in Plaintiff's
6 state criminal matter on October 8, 2015. The second page is dated December 15,
7 2015, and appears to set forth legal arguments regarding the right to self-
8 representation. These are all issues which may be litigated in Plaintiff's current
9 criminal matter, on appeal through the state court system, and if necessary, in a
10 federal habeas petition. Plaintiff has presented no specific objections to any portion
11 of the Report and Recommendation.

12 This civil action challenges the manner in which Plaintiff is being represented
13 in a state criminal matter. Principles of comity, rather than the actual failure to state
14 a constitutional claim, preclude this federal district court from intervening, prior to
15 trial, in a state's criminal prosecution. *See Younger v. Harris*, 401 U.S. 37 (1971).
16 Consequently, it does not appear that dismissal pursuant to 28 U.S.C. §§ 1915(e)(2)
17 and 1915A(b)(1) or a “strike” under 28 U.S.C. 1915(g) is appropriate.

18 Therefore, having reviewed the Report and Recommendation and being fully
19 informed in this matter, **IT IS ORDERED** that the Report and Recommendation is
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1 **ADOPTED in part** and the First Amended Complaint is **DISMISSED without**
2 **prejudice** to seeking appropriate relief in the state criminal proceeding.

3 **REVOCATION OF *IN FORMA PAUPERIS* STATUS**

4 Pursuant to 28 U.S.C. § 1915(a)(3), “[a]n appeal may not be taken *in forma*
5 *pauperis* if the trial court certifies in writing that it is not taken in good faith.” The
6 good faith standard is satisfied when an individual “seeks appellate review of any
7 issue not frivolous.” *See Coppedge v. United States*, 369 U.S. 438, 445 (1962). For
8 purposes of 28 U.S.C. § 1915, an appeal is frivolous if it lacks any arguable basis in
9 law or fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

10 The Court finds that any appeal of this Order would not be taken in good faith
11 and would lack any arguable basis in law or fact. Accordingly, the Court hereby
12 revokes Plaintiff's *in forma pauperis* status.

13 **IT IS HEREBY ORDERED:**

- 14 1. The Report and Recommendation (ECF No. 19) is **ADOPTED in part**.
- 15 2. The Motion to Voluntarily Dismiss (ECF No. 15) is **DENIED as moot**.
- 16 3. The construed Motion to Waive Collection of the Filing Fee (ECF No. 16) is
17 **DENIED**.
- 18 4. The request for class certification is **DENIED**. All documents bearing the
19 names and allegations of person other than Plaintiff (i.e., ECF No. 12 at 8-23)
20 are **STRICKEN**.

1 5. The First Amended Complaint (ECF No. 12) is **DISMISSED** without
2 prejudice to pursuing appropriate remedies in state appellate and collateral
3 review actions as well as in a federal habeas action once state court remedies
4 are exhausted.

5 6. The District Court Executive is directed to enter this Order, enter Judgment,
6 forward copies to Plaintiff at his last known address, and **CLOSE** the file.

7 7. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of this
8 Order would not be taken in good faith and would lack any arguable basis in
9 law or fact. Plaintiff's *in forma pauperis* status is hereby **REVOKE**D.

10 **DATED** December 22, 2015.



A handwritten signature in blue ink that reads "Thomas O. Rice".

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12 THOMAS O. RICE
13 United States District Judge
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